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IN THE
COURT OF APPEALS OF INDIANA

MICHAEL PAGE,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 65A01-0511-CR-528
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE POSEY CIRCUIT COURT
The Honorable James M. Redwine, Judge
Cause No. 65C01-0501-FB-6

September 25, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

SHARPNACK, Judge

Michael Page, ("Page") appeals his sentences for rape as a class B felony[1] and battery as a class A misdemeanor.[2] Page raises two issues, which we revise and restate as:

I. Whether there is sufficient evidence to support Page's conviction for rape; and

II. Whether the trial court abused its discretion in sentencing Page.

We affirm.

The relevant facts follow. On January 28, 2005, Page resided in a mobile home with his four-year-old daughter, his father, Clyde Page, and the victim, seventeen year old R.P. Page and R.P. are second cousins. R.P. moved into Page's home in August or September of 2004, and she and Page had consensual sex on more than one occasion.[3]

R.P. stayed home from school because she had a wisdom tooth pulled the day before. She took a shower and then walked into her bedroom, where she found Page sitting on her bed. R.P. asked Page to leave, but he refused. An argument ensued, and, when Page got up to leave, a milkshake fell off the headboard and spilled onto the bed. R.P. and Page argued about the spilled milkshake, and Page pushed R.P. around and then pushed her onto the bed. Because her towel fell off, R.P. had on no clothes. Page pulled his pants down, placed his arm across R.P.'s chest, forced himself on her, and had sexual intercourse with her.

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[1] Ind. Code § 35-42-4-1(a)(1) (2004).

[2] Ind. Code § 35-42-2-1(a)(1) (2004).

[3] Both parties acknowledged a prior consensual sexual relationship. However, Page disputes that he had sexual intercourse with R. P. on January 28, 2005.

After Page left the room, R.P. put on a pair of shorts and a shirt and tried to go into the kitchen to call someone to pick her up, but Page blocked her entrance to the kitchen, preventing her from using the telephone. Page pushed R.P., and she fell to the floor. R.P. suffered a shoulder injury and scrapes on her skin, and her shorts had a bloodstain in the crotch area, which had not been there prior to her putting them on. Page left in his car. R.P. attempted to tell her uncle, Clyde Page, what happened as well as show him her injuries, but he told her to "get out." Transcript at 45. She called her boyfriend to pick her up.

Upon arriving at her boyfriend's house, police were called and R.P. spoke with an officer regarding what had happened. R.P. went to the emergency room. Dr. Michael Kelley performed a pelvic examination on R.P. and noted fresh blood and vaginal tearing. He concluded that the blood was the result of trauma rather than a menstrual cycle because it did not come from R.P.'s cervix. Dr. Kelley did not locate any DNA; however, he stated that the lack of DNA, from a medical perspective, was not conclusive because "you don't always find it even if someone does ejaculate." Transcript at 127. Based on his examination of R.P., Dr. Kelley concluded that her injuries were "consistent with a recent sexual assault." Id.

On January 31, 2005, the State charged Page with rape as a class B felony and battery resulting in serious bodily injury as a class C felony.[4] The jury found him guilty of rape as a class B felony and battery as a class A misdemeanor. At the sentencing

[4] Ind. Code § 35-42-2-1(a)(3) (2004).

hearing, the trial court noted as a mitigating factor that Page had a lot of family support and that his daughter and father rely on him. As an aggravating factor, the trial court noted Page's past criminal record. The trial court found that "the mitigating and aggravating factors do not outweigh one another as to allow the Court to impose a sentence greater or lesser than the presumptive term." Appellant's Appendix at 147. The trial court sentenced Page to the presumptive term of ten years for the rape conviction and one year for the battery, to be served concurrently in the Indiana Department of Correction.

I.

The first issue is whether the evidence is sufficient to sustain Page's conviction for rape as a class B felony. When reviewing claims of insufficiency of the evidence, we do not reweigh the evidence or judge the credibility of witnesses. Jordan v. State, 656 N.E.2d 816, 817 (Ind. 1995), reh'g denied. Rather, we look to the evidence and the reasonable inferences therefrom that support the verdict. Id. We will affirm the conviction if there exists evidence of probative value from which a reasonable trier of fact could find Page guilty beyond a reasonable doubt. Id. In order for a trier of fact to find Page guilty of rape as a class B felony, the State was required to show that: (1) Page knowingly or intentionally had sexual intercourse with a member of the opposite sex; and (2) the other person was compelled by force or imminent threat of force. Firestone v. State, 838 N.E.2d 468, 472 (Ind. Ct. App. 2005) (citing I.C. § 35-42-4-1).

Page argues that R.P.'s testimony, absent any DNA evidence, is insufficient to sustain a conviction for rape as a class B felony. However, "the uncorroborated

testimony of the victim is sufficient to sustain a criminal conviction." Johnson v. State, 837 N.E.2d 209, 214 (Ind. Ct. App. 2005), trans. denied (citing Morrison v. State, 824 N.E.2d 734, 743 n.6 (Ind. Ct. App. 2005), trans. denied). R.P. testified that Page pulled his pants down, placed his arm across her chest, forced himself on her, and had sexual intercourse with her. In addition, Dr. Kelley, the doctor who examined R.P. at the hospital following the alleged assault, testified that the lack of DNA was not conclusive from a medical perspective because "you don't always find it even if someone does ejaculate." Transcript at 127. Further, based on his examination of R.P., Dr. Kelley concluded that her injuries were "consistent with a recent sexual assault." Id. Based on the record, a reasonable trier of fact could have inferred that Page had sexual intercourse with R.P. and that she was compelled by force. See, e.g., Johnson, 837 N.E.2d at 214 (holding that the victim's uncorroborated testimony describing the acts committed by the defendant toward her in addition to the testimony of the examining physician regarding what the victim reported to him as well as what he found upon examining her following the incident, was sufficient to sustain defendant's conviction).

II.

The next issue is whether the trial court abused its discretion in sentencing Page. Sentencing decisions rest within the discretion of the trial court and are reviewed on

appeal only for an abuse of discretion.[5] Smallwood v. State, 773 N.E.2d 259, 263 (Ind. 2002). An abuse of discretion occurs if "the decision is clearly against the logic and effect of the facts and circumstances." Pierce v. State, 705 N.E.2d 173, 175 (Ind. 1998).

Arguing that his ten-year presumptive sentence for a class B felony rape conviction is unreasonable because the trial court found at least two mitigators and no aggravators, Page requests that this court reduce his sentence and "remand for proper sentencing." Appellant's Brief at 12. However, the record does not support his argument.

At sentencing, the trial court found that Page's family support and the fact that his daughter and father relied on him was a mitigating factor. Additionally, the court found, as an aggravating factor, that Page had a criminal record. Page argues that the court found the age of his criminal record to be a mitigating factor. We disagree. The record indicates that it was defense counsel that argued that "in considering that as a potential aggravating, we think that it is outweighed by some mitigating circumstances in, . . . the passage of time that has occurred since those offenses were committed." Transcript at 242. The trial court agreed that the age of the record was an important consideration, but stopped short of finding that it was a mitigator. Although the trial court agreed with

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[5] Indiana's sentencing scheme was amended effective April 25, 2005, to incorporate advisory sentences rather than presumptive sentences. See Ind. Code §§ 35-38-1-7.1, 35-50-2-1.3. Page committed his offenses prior to the effective date and was sentenced on October 24, 2005. Page argues that the presumptive sentencing statutes apply. Applying those statutes, we conclude that the trial court did not abuse its discretion. Moreover, the application of the amended sentencing statute would not change the result here.

Additionally, Page makes no claim that his sentence violates Blakely v. Washington, 542 U.S. 296, 124 S.Ct. 2531 (2004), reh'g denied.

defense counsel that "the age of the record is an important consideration for the Court," and that Page appeared to "profit from those experiences," the record does not support Page's argument that the trial court treated it as a mitigating factor. Transcript at 244. The parties are in dispute as to whether there were two mitigators and no aggravators or one mitigator and one aggravator. We find that it is the latter. This is supported by the trial court's sentencing order, which states that "In consideration of the record in this cause, the [C]ourt finds that the mitigating and aggravating factors do not outweigh one another as to allow the [Court] to impose a sentence greater or lesser than the presumptive term . . . ." Appellant's Appendix at 147. The trial court did not abuse its discretion in sentencing Page.

For the foregoing reasons, we affirm Page's convictions for rape as a class B felony and battery as a class A misdemeanor.

Affirmed.